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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiffs and Respondent,

v.

JAYLEN HOLLOWAY,

Defendant and Appellant.

E070490

(Super.Ct.No. MBCRF1862040)

OPINION

APPEAL from the Superior Court of Inyo County. Burt T. Pines, Judge. (Retired judge of the Los Angeles Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Arthur Martin, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

On February 8, 2018, a felony complaint charged defendant and appellant Jaylen Holloway with violating Penal Code section 4501.5, a battery by a person confined in state prison upon a nonconfined person (count 1). The complaint also alleged that defendant had a strike prior based on a conviction for first degree burglary.

On April 11, 2018, a jury found defendant guilty as charged. Thereafter, the court found the prior strike allegation to be true. At the sentencing hearing, the trial court declined to strike the strike prior and imposed the low term of two years, doubled to four years by the strike prior. The four-year term was ordered to run consecutive to a four-year term defendant was already serving. The court also imposed fines and assessments.

On May 8, 2018, defendant filed a timely notice of appeal.

B. FACTUAL HISTORY

Prison inmates who are trained to fight fires for the California Department of Forestry and Fire Protection (Cal Fire) were housed at “fire camps.” In May 2017, defendant was an inmate at one of the fire camps, the Owens Valley Conservation Camp.

On May 7, 2017, at approximately 8:15 a.m., Monica Vasquez, a captain with Cal Fire, saw an individual in orange inmate clothing walking “out of bounds” and away from the area of the camp where inmates were allowed. Vasquez called and informed California Department of Corrections and Rehabilitation (CDCR) personnel. Moments later, Vasquez saw CDCR Correctional Officer Roger Romero speed by in a truck, headed toward the water treatment ponds where Vasquez had seen the inmate.

As Officer Romero drove toward the ponds, he saw an inmate in orange run out of his sight. Romero parked the truck and got out. He could see the inmate hiding in a bush. Romero twice told the inmate that he could see him and ordered him to come out. When the inmate came out, Romero recognized the inmate as defendant. Defendant walked to Romero as instructed. When defendant reached Romero, the officer told defendant to “turn around and cuff up.” Defendant turned and put his hands behind his back. After Romero fastened one cuff to defendant’s left wrist, defendant pulled his right hand away and put the hand into his front pocket. Defendant pulled the hand back out of the pocket and threw a black object a short distance away. Romero told defendant “Don’t make this worse.” Romero then realized he no longer had a grip on defendant; defendant was bent over and pulling away. Romero pulled out his pepper spray and when defendant looked back, Romero deployed the spray. Defendant turned his head and Romero jumped on defendant’s back. Romero took defendant to the ground and got control of his arms.

Captain Vasquez testified that after Romero had defendant in one cuff, defendant spun around and hit Romero in the back of the head. According to Vasquez, Romero fell and defendant hit Romero again. Romero could not remember being hit.

CDCR Correctional Officer Steven Thompson was the other officer on duty on May 7, 2017. When Officer Romero told Thompson that he was going to check on a possible prisoner out of bounds, Thompson called for a bed count to get the other inmates inside. Thompson then travelled in the direction of the ponds. Thompson stated that he saw Romero and defendant “standing pretty close to one another and it appear[ed] like

the inmate was going to comply and be restrained in handcuffs.” Thompson then saw the inmate pull away “kind of jerking his body, and then swinging one of his arms and looked as if he hit Romero.” After Thompson saw defendant hit Romero, Thompson ran to assist. When Thompson got to defendant and Romero, Romero was lying on top of defendant struggling to maintain control. Thompson helped Romero gain control of and restrain defendant.

Officer Romero testified that after defendant was cuffed, Officer Thompson took control of defendant while Romero looked for evidence. Approximately 10 feet away, Romero found two black film containers with what looked like marijuana inside.

After Captain Vasquez told Officer Romero that he had been hit, he realized he was shaking violently. He let Vasquez convince him to sit in the truck and get warm.

Captain Vasquez testified that Officer Romero was confused. She asked him five questions and he was only able to answer two of the questions correctly. Romero did not recall being struck, which led Vasquez to conclude he had lost consciousness. Vasquez felt a small lump on Romero’s head. Romero was taken to the emergency room by ambulance. Romero’s jaw and head started to feel sore on the drive to the hospital.

Defendant testified that he had gone “out of bounds” to retrieve some cell phones that he planned to sell. He admitted that he had violated prison rules by doing so. Defendant met someone he did not know and received three or four cell phones. Defendant put one phone in his pocket and hid the others. Defendant denied having any marijuana on his person.

After Officer Romero found him and held his left wrist, defendant put his right hand in his pocket, grabbed the cell phone, and threw it over Romero’s head. Defendant denied taking “a swing” at Romero.

DISCUSSION

After defendant appealed, and upon his request, this court appointed counsel to represent him. On November 26, 2018, counsel filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record. We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no error.

DISPOSITION

The judgment is affirmed.

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MILLER
Acting P. J.

We concur:

CODRINGTON
J.

SLOUGH
J.